IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4557 OF 2005

Ms. Neelam K. Tripathi ...Petitioner

Vs.

The State of Maharashtra & Ors. ...Respondents

Mr. S.M. Oak for Petitioner
Mr. R. D. Rane Govt. Pleader for Respondents 1 & 3
Mr. G.M. Kothari for Respondent No.2
Mr. M.S. Lagu for Respondents 4 & 5
Mr. Mandar Limaye for Respondent No.6

CORAM : F.I. REBELLO & ROSHAN DALVI, JJ.
DATED : 1ST DECEMBER 2005.

P.C.

1. The Petitioner was appointed as a Clerk by Respondent No.5 School on 12th June 2000 and came to be dismissed on 13th September 2000.

2. The Petitioner challenged the order of dismissal in Appeal No.97 of 2000 in the School Tribunal, Navi Mumbai. The Appeal came to be disposed of by minutes of the order dated 17th April 2003 Exhibit -C to the Petition signed by the Petitioner for herself and her father as the Secretary of Respondent No.4. This order has not

been challenged by the Management. Inspite of that it appears that the Management forwarded the name of Respondent No.6 for approval.

3. The Petitioner has approached the Court because the Petitioner's service was not approved by Respondent No.3 and Instead Respondent No.6 was granted approval by an order dated 27th April 2005.

4. Respondent No.6 is the husband of the Head Mistress of Respondent No.5 School. He is employed as Engineer in one Vidyut Metalics Ltd. He also serves as a Clerk in Adarsh Night Hindi High School which is an aided institution. Yet he has been granted approval for the post of Clerk in Respondent No.5 School.

5. The approval letter dated 27th April 2004 Exhibit-D to the Petition, shows Respondent No.6 as a Clerk. One Sheshiyasi R. Rai is shown as a Peon. One Girish Rai was directed to produce his education certificates to decide upon his approval. Interestingly one Bhagwan Sukhdev Rai is shown to be the President of Respondent No.4 Trust.

6. When the matter came before us, noting that Respondent No.6 was the husband of the Headmistress, Respondent No.5 and Respondent NO.4 was her father-in-

law, we directed an enquiry to be made by Respondent No.3. The report has been submitted.

7. The inquiry report made by Respondent No.3 as per the directions passed in this Petition on 7th October 2005 shows the attendance of Respondent No.6 in Respondent No.5 School only between 5.00 a.m. To 7.00 a.m. and that too for some days in the month. He is a shift employee with Vidyut Metallics Ltd. Respondent No.6. does not fulfill the requirement of Rule 21(4) of the M.E.P.S Rules, 1981 requiring a Clerk to serve for 38.5 clock hours a week. The report also shows that Respondent No.6 was not seen doing any work by the teaching staff of Respondent No.5 School. His attendance, as shown in the muster, is irregular. The approval therefore granted was without Respondent No.3 having all the material before him. The approval granted to Respondent No.6 has therefore to be set aside.

8. The Respondent No.5 is now a 100% aided School. There is only one post of Clerk. No employee whether teaching or non-teaching can be inducted as a Clerk without following the requisite procedure under the Act and the Rules.

9. In the above circumstances the order of approval granted to Respondent No.6 as a Clerk in Respondent

No.5 school is required to be set aside. However, the Petitioner also cannot be granted approval merely based upon the appointment letter dated 12th June 2000. The Respondent No.3 is directed to conduct an enquiry whether the appointment of Petitioner was after following due procedure under the Act and the Rules. If only procedure has been followed then to grant approval to the appointment of the Petitioner.

Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(ROSHAN DALVI, J.)